

HOUSE No. 4348

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 26, 2016.

The committee on the Health Care Financing to whom was referred the petition (accompanied by bill, Senate, No. 574) of Benjamin B. Downing, Marjorie C. Decker, Daniel A. Wolf, Patricia D. Jehlen and others for legislation relative to equitable health care pricing, reports recommending that the accompanying bill (House, No. 4348) ought to pass.

For the committee,

JEFFREY SÁNCHEZ.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to equitable health care pricing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 7 of chapter 12C of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the word “center” in lines 3, 6 and 37, each
3 time it appears, the following words: - and for the other purposes described in this chapter which
4 shall include any transfer made to the Community Hospital Reinvestment Trust Fund established
5 in section 2TTTT of chapter 29.

6 SECTION 2. Said chapter 12C is hereby further amended by adding the following
7 section:-

8 Section 23. Subject to appropriation, the center shall transfer annually \$5,000,000 to the
9 Community Hospital Reinvestment Trust Fund established in section 2TTTT of chapter 29, not
10 later than June 30; provided, however, that such transfer shall not result in an increase in the
11 assessment calculated under section 7 of this chapter.

12 SECTION 3. Said section 23 of said chapter 12C, added by section 2, is hereby amended
13 by striking out the figure “\$5,000,000” and inserting in place thereof the following figure:-
14 “\$10,000,000”.

15 SECTION 3A. Said chapter 12C is hereby further amended by striking out section 23, as
16 amended by section 3.

17 SECTION 4. Chapter 29 of the General Laws is hereby amended by inserting after
18 section 2RRRR the following 2 sections:-

19 Section 2SSSS. (a) There shall be a MassHealth Delivery System Reform Trust Fund.
20 The secretary of health and human services shall be the trustee of the fund and shall expend
21 money in the fund to: (i) provide reimbursement for services delivered to MassHealth
22 beneficiaries by acute hospitals participating in the MassHealth program; and (ii) make enhanced
23 service payments and incentive payments to acute hospitals and other providers or care
24 organizations under contract to provide MassHealth services pursuant to an approved state plan
25 or federal waiver. There shall be credited to the fund: (1) any transfers from the Health Safety
26 Net Trust Fund established in section 66 of chapter 118E; (2) an amount equal to any federal
27 financial participation revenues claimed and received by the commonwealth for eligible
28 expenditures made from the fund; (3) any revenue from appropriations or other money
29 authorized by the general court and specifically designated to be credited to the fund; and (4)
30 interest earned on any money in the fund. Amounts credited to the fund shall be expended
31 without further appropriation.

32 (b) Money in the fund may be expended for Medicaid payments under an approved state
33 plan or federal waiver; provided, however, that all payments from the fund shall be: (i) subject to

34 the availability of federal financial participation; (ii) made only under federally-approved
35 payment methods; (iii) consistent with federal funding requirements and all federal payment
36 limits as determined by the secretary of health and human services; and (iv) subject to the terms
37 and conditions of an agreement between acute hospitals, other providers or care organizations
38 and the executive office of health and human services. To accommodate timing discrepancies
39 between the receipt of revenue and related expenditures, the comptroller may certify for payment
40 amounts not to exceed the most recent revenue estimates as certified by the secretary of health
41 and human services to be transferred, credited or deposited under this section. Money remaining
42 in the fund at the end of a fiscal year shall not revert to the General Fund.

43 (c)(1) Effective October 1 of each provider or care organization rate year, the secretary of
44 health and human services shall expend money in the fund for MassHealth services provided by
45 qualifying acute hospital providers under contract with the executive office of health and human
46 services or under subcontracts with care organizations that contract with the office in connection
47 with the MassHealth program.

48 (2)(A) The secretary of health and human services shall expend \$250,000,000 in
49 payments to qualifying acute hospital providers or to care organizations for their payments to
50 hospitals participating in their respective provider networks, subject to the terms and conditions
51 of a payment agreement with the executive office of health and human services; provided,
52 however, that the payments shall be in addition to the sum of: (i) the amount of reimbursement
53 otherwise provided for and payable in each contract year to those hospitals under contracts
54 executed pursuant to the request for applications issued periodically by the executive office of
55 health and human services for the procurement of acute hospital services under the MassHealth
56 program; and (ii) the portion, as determined by the secretary, of payments made under the

57 contracts executed between care organizations and the executive office of health and human
58 services which are projected to be needed by the care organizations for payments to hospitals
59 contracted to participate in the provider networks of the care organizations.

60 (B) Money credited to and deposited in the fund that is not expended under subparagraph
61 (A) may be expended for incentive payments to care organizations or other providers under
62 contract with the executive office of health and human services to provide MassHealth services;
63 provided, however, that all such incentive payments shall be consistent with the relevant
64 provisions of the Medicaid state plan under Title XIX of the federal Social Security Act or any
65 waiver of Title XIX provisions granted by the federal Centers for Medicare and Medicaid
66 Services.

67 (3)(A) In addition, to the payments set forth above, the secretary of health and human
68 services shall expend up to \$15,000,000, subject to the availability of federal financial
69 participation of not less than \$7,500,000, in payments to qualifying acute hospital providers or to
70 care organizations for their payments to hospitals participating in their respective provider
71 networks, subject to the terms and conditions of a payment agreement with the executive office
72 of health and human services; provided, however, that the payments shall be in addition to the
73 sum of: (i) the amount of reimbursement otherwise provided for and payable in each contract
74 year to those hospitals under contracts executed pursuant to the request for applications issued
75 periodically by the executive office of health and human services for the procurement of acute
76 hospital services under the MassHealth program; and (ii) the portion, as determined by the
77 secretary, of payments made under the contracts executed between care organizations and the
78 executive office of health and human services which are projected to be needed by the care

79 organizations for payments to hospitals contracted to participate in the provider networks of the
80 care organizations.

81 (B) Money credited to and deposited in the fund that is not expended under subparagraph
82 may be expended for incentive payments to care organizations or other providers under contract
83 with the executive office of health and human services to provide MassHealth services; provided,
84 however, that all such incentive payments shall be consistent with the relevant provisions of the
85 Medicaid state plan under Title XIX of the federal social security act or any waiver of Title XIX
86 provisions granted by the federal Centers for Medicare and Medicaid Services.

87 (d) Not later than 30 days after the close of each hospital fiscal quarter, the executive
88 office of health and human services shall submit to the house and senate committees on ways and
89 means a detailed accounting of all money transferred, credited or deposited into the fund. The
90 fourth quarter report shall include the amount remaining in the fund at the end of each hospital
91 fiscal year and the reasons for the unspent amount.

92 Section 2TTTT. (a) There shall be a Community Hospital Reinvestment Trust Fund to be
93 expended, without further appropriation, by the secretary of health and human services. The fund
94 shall consist of money from public and private sources, including gifts, grants and donations,
95 interest earned on such money, any other money authorized by the general court and specifically
96 designated to be credited to the fund and any funds provided from other sources. Money in the
97 fund shall be used to provide annual financial support, consistent with the terms of this section,
98 to eligible acute care hospitals. The secretary, as trustee, shall administer the fund and shall make
99 expenditures from the fund consistent with this section.

100 (b) The secretary may incur expenses and the comptroller may certify amounts for
101 payment in anticipation of expected receipts; provided, however, that no expenditure shall be
102 made from the fund which shall cause the fund to be deficient at the close of a fiscal year.
103 Revenues deposited in the fund that are unexpended at the end of a fiscal year shall not revert to
104 the General Fund and shall be available for expenditure in the following fiscal year.

105 (c) The secretary shall annually direct payments from the fund to eligible acute care
106 hospitals. To be eligible to receive payment from the fund, an acute care hospital shall be
107 licensed under section 51 of chapter 111 and shall not be a hospital with relative prices that are at
108 or above 120 per cent of the statewide median relative price, as determined by the center for
109 health information analysis.

110 (d) In directing payments, the secretary shall allocate payments to eligible acute care
111 hospitals based on the proportion of each eligible acute care hospital's total gross patient service
112 revenue to the combined gross patient service revenue of all eligible acute care hospitals in the
113 prior hospital rate year; provided, however, that payments shall be adjusted to allocate
114 proportionally greater payments to eligible acute care hospitals with relative prices that fall
115 farthest below 120 per cent of the statewide median price. The secretary shall establish by
116 regulation a formula to allocate payments pursuant to this subsection.

117 (e) The secretary may require as a condition of receiving payment from the fund that an
118 eligible acute care hospital agree to an independent financial and operational audit to recommend
119 steps to increase sustainability and efficiency of the acute care hospital.

120 (f) The executive office of health and human services shall promulgate regulations
121 necessary to carry out this section.

122 (g) Not later than 30 days after payments are allocated to eligible acute care hospitals
123 under this section, the secretary for health and human services shall file a report with the joint
124 committee on health care finance and the house and senate committees on ways and means
125 detailing the allocation and recipient of each payment.

126 SECTION 5. Section 2SSSS of chapter 29 of the General Laws, inserted by section 4, is
127 hereby amended by striking out subsection (c).

128 SECTION 6. Section 64 of chapter 118E of the General Laws, as appearing in the 2014
129 Official Edition, is hereby amended by striking out the definition of “Total acute hospital
130 assessment amount” and inserting in place thereof the following definition:-

131 “Total acute hospital assessment amount”, an amount equal to \$417,500,000, the sum of
132 \$160,000,000 and the amount transferred to the MassHealth Delivery System Reform Trust Fund
133 under section 66, plus 50 per cent of the estimated cost, as determined by the secretary of
134 administration and finance, of administering the health safety net and related assessments in
135 accordance with sections 65 to 69, inclusive, including those assessments transferred to the
136 MassHealth Delivery System Reform Trust Fund established in section 2SSSS of chapter 29.

137 SECTION 7. Said section 64 of said chapter 118E is hereby further amended by striking
138 out the definition “Total acute hospital assessment amount”, as appearing in section 5, and
139 inserting in place thereof the following definition:-

140 “Total acute hospital assessment amount”, an amount equal to \$160,000,000 plus 50 per
141 cent of the estimated cost, as determined by the secretary of administration and finance, of
142 administering the health safety net and related assessments in accordance with sections 65 to 69,
143 inclusive.

144 SECTION 8. Subsection (b) of section 66 of said chapter 118E, as appearing in the 2014
145 Official Edition, is hereby amended by striking out the second sentence and inserting in place
146 thereof the following 2 sentences:- The office shall transfer the greater of \$257,500,000 or the
147 amount expended in payments under section 2SSSS of chapter 29 to the MassHealth Delivery
148 System Reform Trust Fund established in said section 2SSSS of said chapter 29. The office shall
149 expend amounts in the fund, except for amounts transferred to the Commonwealth Care Trust
150 Fund or the MassHealth Delivery System Reform Trust Fund, for payments to hospitals and
151 community health centers for reimbursable health services provided to uninsured and
152 underinsured residents of the commonwealth, consistent with the requirements of this section,
153 section 69 and the regulations adopted by the office.

154 SECTION 8A. Said subsection (b) of said section 66 of said chapter 118E is hereby
155 amended by striking out the second sentence, inserted by section 8.

156 SECTION 9. There shall be a special commission to review variation in prices among
157 providers. The commission shall consist of: the senate chair of the joint committee on health care
158 financing who shall serve as co-chair; the house chair of the joint committee on health care
159 financing who shall serve as co-chair; the attorney general or a designee; the secretary of
160 administration and finance or a designee; the secretary of health and human services or a
161 designee; the executive director of the group insurance commission or a designee; 1 person who
162 shall be appointed by the senate president; 1 person who shall be appointed by the speaker of the
163 house of representatives; 1 person who shall be appointed by the minority leader of the senate; 1
164 person who shall be appointed by the minority leader of the house of representatives; 8 persons
165 who shall be appointed by the governor, 1 of whom shall be a health economist, 1 of whom shall
166 represent a high-Medicaid and low-income public payer disproportionate share hospital, 1 of

167 whom shall represent a hospital with not more than 200 beds, 1 of whom shall represent a
168 hospital with at least 800 staffed beds, 1 of whom shall have demonstrated expertise in
169 representing the health care workforce as a leader in a labor organization, 1 of whom shall be a
170 representative of an employer with not more than 50 employees, 1 of whom shall be a
171 representative of an employer with more than 50 employees and 1 of whom shall be a
172 representative of an ambulatory surgical center; 1 person who shall be a representative of the
173 Massachusetts Council of Community Hospitals, Inc.; 1 person who shall be a representative of
174 the Massachusetts Association of Health Plans, Inc.; 1 person who shall be a representative of
175 Blue Cross and Blue Shield of Massachusetts, Inc.; 1 person who shall be a representative of the
176 Massachusetts Hospital Association, Inc.; and 1 person who shall be a representative of the
177 Conference of Boston Teaching Hospitals, Inc.. In making appointments, the governor shall, to
178 the maximum extent feasible, ensure that the commission represents a broad distribution of
179 diverse perspectives and geographic regions.

180 The commission shall conduct a rigorous, evidence-based analysis to identify the
181 acceptable and unacceptable factors contributing to price variation in physician, hospital,
182 diagnostic testing and ancillary services. The analysis shall include, but not be limited to, an
183 examination of the following factors: quality, medical education, stand-by service capacity,
184 emergency service capacity, special services provided by disproportionate share hospitals and
185 other providers serving underserved or unique populations, market share of individual providers
186 and affiliated providers, provider size, advertising, location, research, costs, care coordination,
187 community-based services provided by allied health professionals and use of and continued
188 advancement of medical technology and pharmacology. The analysis shall also include a
189 comparison of price variation between providers in the commonwealth and providers in other

190 states and a review of the feasibility of requiring insurers to separately contract with all provider
191 locations for a multi-location health care provider, rather than contracting only with the
192 individual provider locations, and a review of contracting practices that require payers to pay the
193 same or similar prices to all provider locations for a multi-location health care provider where
194 geographic differences in the provider's site do not support charging the same or similar prices.

195 After identifying the factors contributing to price variation, the commission shall
196 recommend steps to reduce provider price variation and shall recommend the maximum
197 reasonable adjustment to a commercial insurer's median rate for individual or groupings of
198 services for each acceptable factor. To conduct its review and analysis, the commission may
199 contract with an outside organization with expertise in the analysis of health care financing and
200 provider payment methodologies. The center for health information and analysis and the health
201 policy commission shall provide the commission and any contracted outside organization, to the
202 extent possible, relevant data and analysis necessary for the evaluation; provided, however, that
203 such data shall be confidential and shall not be a public record under clause Twenty-sixth of
204 section 7 of chapter 4 of the General Laws.

205 The commission shall hold its first meeting not later than September 15, 2016 and shall
206 meet not less frequently than monthly thereafter.

207 If the commission determines that legislation is necessary to address price variation
208 issues identified during its deliberations, the commission, as part of its final report, shall file
209 proposals for such legislation not later than March 15, 2017 with the clerks of the house of
210 representatives and the senate, who shall forward a copy of the materials filed by the commission

211 to the house and senate committees on ways and means and the joint committee on health care
212 financing.

213 SECTION 10. Section 279 of chapter 224 of the acts of 2012 is hereby repealed.

214 SECTION 11. Section 3 shall take effect on July 1, 2017.

215 SECTION 12. Section 3A shall take effect June 30, 2021.

216 SECTION 13. Sections 4, 6 and 8 shall take effect on October 1, 2016.

217 SECTION 14. Sections 5 and 7 shall take effect on October 1, 2022.

218 SECTION 15. Section 8A shall take effect September 30, 2022.